

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN JONES DOE,  
Plaintiff,

v.

LISA WALKER, et al.,  
Defendants.

Case No. 16-cv-05195-JD

**ORDER RE MOTION TO DISMISS**

Pro se plaintiff John Doe alleges that his constitutional rights were violated when he was placed in an involuntary detention in a psychiatric hospital pursuant to the Lanterman-Petris-Short Act, Cal. Welfare & Inst. Code § 5000, *et seq.* (the LPS Act). Doe's first amended complaint (FAC) was dismissed with leave to amend. Dkt. No. 97. Doe was advised that a failure to file an amended complaint by February 15, 2023, would result in a dismissal with prejudice. *Id.* at 6. On February 23, 2023, Doe filed a second amended complaint (SAC) with little in the way of changes. Dkt. No. 98.

The County defendants asked to dismiss the SAC under Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 99. The parties' familiarity with the record is assumed, and the SAC is dismissed with leave to amend.

**DISCUSSION**

The Court previously discussed the well-established standards that govern a motion to dismiss under Rule 12(b)(6) and the liberal construction afforded to pro se pleadings. *See* Dkt. No. 67 at 3. The Court also described the standards that apply to Doe's claims under 42 U.S.C. § 1983. Dkt. No. 97 at 2-3. Those discussions are incorporated here.

1 The FAC did not plausibly allege a constitutional violation because it did not include  
 2 enough facts to “suggest[] that the actions of the County defendants were objectively unreasonable  
 3 in any way.” Dkt. No. 97 at 5. The SAC, and Doe’s opposition to the motion to dismiss, do not  
 4 add any factual allegations to alter that analysis. *See generally* Dkt. Nos. 98, 100. Doe has had  
 5 ample opportunity to allege a plausible claim against the County defendants in their official and  
 6 individual capacities, and nothing in the record indicates that further amendment would be  
 7 productive. *See Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013) (“A district  
 8 court’s discretion to deny leave to amend is ‘particularly broad’ where the plaintiff has previously  
 9 amended.”) (citation omitted). Consequently, the claims against the County defendants are  
 10 dismissed with prejudice.

11 Doe’s challenge to the constitutionality of the LPS Act was dismissed with leave to amend  
 12 because Doe did not name any defendant for the claim. Dkt. No. 97 at 5. The SAC appears to add  
 13 the California Attorney General and the Director of the California Department of Public Health as  
 14 defendants. Dkt. No. 98 at ECF p. 8. As the Court previously stated, state officials may be sued  
 15 to prevent the enforcement of an unconstitutional statute, but an individual state official “‘must  
 16 have some connection with the enforcement of the act.’” Dkt. No. 97 at 5 (quoting *Ass’n des*  
 17 *Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013)). The  
 18 problem for Doe is that the SAC is devoid of allegations to suggest that the Attorney General or  
 19 the Director of the Department of Public Health has a direct connection to the challenged  
 20 provisions of the LPS Act. *See Canards*, 729 F.3d at 943.

21 The Court would be within its discretion to dismiss this claim with prejudice because Doe  
 22 has been previously advised of the requirements to identify a proper defendant. *See* Dkt. No. 67 at  
 23 3 (finding that Doe failed to “allege any facts showing that the Attorney General or any other state  
 24 actor was meaningfully connected to the claims and events alleged in the complaint”); *see also*  
 25 Dkt. No. 97 at 5-6. Even so, because Doe is a pro se litigant, and because this is the first time that  
 26 Doe has named the Director of the Department of Public Health as a defendant, he will be afforded  
 27 a final opportunity to amend the sixth cause of action challenging the constitutionality of the LPS  
 28 Act. If Doe chooses to amend, he should include factual allegations of a connection that is “fairly

1 direct” between the state officials and the challenged provisions because “a generalized duty to  
2 enforce state law or general supervisory power over the persons responsible for enforcing the  
3 challenged provision will not subject an official to suit.” *Canards*, 729 F.3d at 943 (internal  
4 quotations omitted).

### 5 CONCLUSION

6 The SAC is dismissed. The claims against the County defendants are dismissed with  
7 prejudice, and the sixth cause of action challenging the LPS Act as unconstitutional is dismissed  
8 with leave to amend. Because the federal claims have been dismissed, the Court declines to  
9 exercise supplemental jurisdiction over any California state law claims asserted in the SAC. *See*  
10 18 U.S.C. § 1376(c); *Parra v. PacifiCare of Ariz., Inc.*, 715 F.3d 1146, 1156 (9th Cir. 2013);  
11 *Prebilich v. City of Cotati*, No. 3:21-cv-02380-JD, 2021 WL 5964597, at \*3 (N.D. Cal. Dec. 16,  
12 2021).

13 Doe may file an amended complaint by August 17, 2023. This will likely be the final  
14 opportunity to amend. A failure to comply with this order will result in dismissal with prejudice  
15 under Federal Rule of Civil Procedure 41(b).

16 **IT IS SO ORDERED.**

17 Dated: July 27, 2023

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JAMES DONATO  
United States District Judge